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General Bankruptcy Counsel to
Chapter 11 Debtor and Debtor in Possession,
KOMBU KITCHEN SF LLC, dba NIBLL

UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA – LOS ANGELES DIVISION

In re:

KOMBU KITCHEN SF LLC, dba NIBLL,

Debtor and Debtor In Possession.

Case No. 2:23-bk-17276-SK

Chapter 11

Subchapter V

**REPLY TO CLASS CREDITORS' JOINT
OPPOSITION OF CLASS CREDITORS
TO FIRST INTERIM APPLICATION OF
WEINTRAUB ZOLKIN TALERICO &
SELTH LLP FOR APPROVAL OF
COMPENSATION AND
REIMBURSEMENT OF EXPENSES**

Hearing:

Date: October 16, 2024

Time: 10:00 a.m.

Courtroom: 1575

255 E. Temple Street

Los Angeles, CA 90012

Judge: Hon. Sandra R. Klein

WEINTRAUB ZOLKIN TALERICO & SELTH LLP
11766 WILSHIRE BLVD., SUITE 730
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CASES

In tr Strand,
375 F.3d 854 (9th Cir. 2004). 11

STATUTES

11 U.S.C. § 331 11

Weintraub Zolkin Talerico & Selth LLP (“WZTS” or the “Firm”), general bankruptcy counsel for KOMBU KITCHEN SF LLC, dba NIBLL, the Subchapter V debtor and debtor in possession (the “Debtor”) in the above-captioned bankruptcy case (“Case”), hereby submits its reply (“Reply”) to the joint objections filed by the Class Creditors to the Firm’s first interim fee application (the “Application”) filed in this Case (Doc. No. 301) (the “Objection”).

Class Creditors contend that the fees requested by WZTS are excessive and unwarranted because a plan has not been confirmed in the Case and that many of the hours billed are for problems purportedly caused by the Debtor and/or WZTS. Class Creditors request that the Court deny the Application in its entirety and require that WZTS file a new fee application to address unidentified “improprieties”, or, alternatively, reduce WZTS’s requested fees by 50%.

Class Creditors completely ignore their role as dissenters to nearly every step taken by the Debtor from the outset of the Case. That dissent and their ongoing challenges to the Debtor, as debtor in possession, and its efforts to exit this Case, and their own lack of good faith in filing proofs of claim that not only were without support but were entirely inconsistent with positions taken by them in their state court litigation against the Debtor and Thibeaults have played an instrumental role in the delay of which they now complain.

WZTS’s fees in this Case have been reasonable and necessary. The fees are where they are due to the litigious behavior of Class Creditors and their unwillingness to engage in settlement discussions with the Debtor, despite good faith efforts by the Debtor that were spearheaded by WZTS. The Subchapter V Trustee has also tried and had no success bringing Class Creditors to the table. WZTS and the Trustee have emphasized since Day 1 that Class Creditors’ litigiousness and unwillingness to engage in settlement discussions based on the Debtor’s financial abilities would result in increased administrative claims and a reduced distribution to unsecured creditors. This has fallen on deaf ears.

Despite Class Creditors’ claims to the contrary, WZTS’s services have benefited the estate. Although it is true that the plan process has been delayed, that delay does not mean that there has not been progress or that the Debtor will not be able to confirm its plan. The Debtor believes the sole remaining issue concerning confirmation is the amount of the Class Creditors’ claims against

1 the Debtor. Once the claims are liquidated in the upcoming state court trial and this Court gives the
2 Debtor the green light to proceed it will do so.

3 Finally, Class Creditors' contention that WZTS should not have any of its fees allowed, or
4 any more than 50% of its fees allowed, lacks any explanation or justification by Class Creditors. It
5 is completely arbitrary and without specificity. Class Creditors' further contention that, by allowing
6 the fees and expenses of WZTS, the Court "would decimate the estate" entirely ignores the relief
7 requested in the Application and the applications of the other professionals. The Application seeks
8 allowance of only 80% of WZTS's total fees. The remaining 20% represents a holdback of over
9 \$70,0000, a significant sum that the Debtor and WZTS believe to be reasonable under the
10 circumstances. In addition, as disclosed in each of the interim fee applications, the Debtor and the
11 other professionals who have filed interim fee applications have agreed to receive payment of
12 \$170,000 following the Court's entry of any order(s) approving those applications. The \$170,000 is
13 to be divided ratably among the applicants, with further monthly payments of \$15,000 a month to
14 be ratably divided among them as well. The initial \$170,000 payment represents approximately 36%
15 of the total fees and expenses incurred by the professionals whose fee applications are now before
16 the Court. That is hardly unreasonable under the circumstances of this Case.¹ To the contrary, the
17 proposed payment structure is reasonable because it takes into account what the Debtor can now
18 afford, while relieving the Debtor's professionals of at least a portion of the fees and expenses that
19 they have been carrying for the past year.

20 **I. RELEVANT BACKGROUND**

21 **A. Basis for Objections to Class Creditors' Proofs of Claims.**

22 Class Creditors' suggest that WZTS is not entitled to payment of its fees because the Debtor
23 caused the delay in the plan's confirmation primarily because it joined in the objections filed by the
24 Thibeaults to Class Creditors' proofs of claims, which is beyond ironic given that Class Creditors
25 always wished to proceed to trial in the state court.

26 _____
27 ¹ As disclosed in the *Declaration of Keven Thibeault in Support of the First Interim Applications of*
28 *Debtor's Professionals for Approval of Compensation and Reimbursement of Expenses* (Dkt. 293),
as of August 31, 2024, the cash on hand in the Debtor's operating accounts totaled \$674,810.64.

1 The Debtor did not initially intend to object to Class Claimants' claims against it. The
2 Debtor, however, did debate whether to do so once it saw Class Claimants' facially defective proofs
3 of claim, without support and most importantly, vastly greater in amount than what the Debtor had
4 understood them to be.

5 On January 10, 2024, Class Creditors filed two separate proofs of claim in this Case. One
6 subgroup of the Class Creditors, made up of a class led by Aja De Coudreaux, Daeun Hwang, Myriah
7 Sims, Vera Lopez, Nicole Vassallo, and Zena Evans, filed Proof of Claim 25 ("Claim 25"). Claim
8 25 is blank and unsigned (and, hence, unsworn). A copy of Claim 25 is attached hereto as **Exhibit**
9 **1**. Claim 25 is not executed and has attached a single page summary chart with dollar figures totaling
10 \$11,097,459.41.

11 Another group of the Class Creditors, made up of a class led by Maria de Jesus Vergara,
12 Paholo Ramos, and Roberto Reyes (the "Vergara Claimants"), filed Proof of Claim 26 ("Claim 26",
13 and, collectively with Claim 25, the "Proofs of Claim"). Claim 26 was completed and was executed
14 by Cody Bolce, counsel for the Vergara Claimants. A copy of Claim 26 is attached hereto as **Exhibit**
15 **2**. The only attachment to Claim 26 is the identical summary chart that was attached to Claim 25.

16 After reviewing the facially deficient Proofs of Claim and what the Debtor believed to be
17 amounts that Class Claimants could not support, the Debtor seriously considered filing objections to
18 the Proofs of Claim. But the Debtor refrained from doing so until it saw Class Claimants' position
19 in the state court.

20 On April 12, 2024, a mere three months after Class Creditors filed the Proofs of Claim, Class
21 Creditors represented in a mandatory settlement conference statement filed with the state court (the
22 "MSC Statement") that their economic damages amounted to only \$5,876,406, an amount that was
23 53% of (and approximately \$5.2 million less than) the aggregate amount claimed in the Proofs of
24 Claim. A copy of the MSC Statement is attached hereto as **Exhibit 3**.

25 WZTS did not become aware of Class Creditors' position regarding their claims until the
26 start of May 2024, when WZTS was advised of the MSC Statement by the Thibeaults' litigation
27 counsel, Craig Ramsdell. Thereafter, further consideration was given to objecting to the Proofs of
28 Claim not only because the Proofs of Claims were facially insufficient, but also because Class

1 Creditors had taken an entirely inconsistent position regarding their claims in the state court than
2 they had in the Proofs of Claim. By the Proofs of Claim, Class Claimants, without support or
3 explanation, inflated their claims by almost 189% over the amounts they asserted only three months
4 later in the state court litigation.

5 As the Debtor was preparing for a plan confirmation hearing on May 22, 2024, it was initially
6 contemplated that the Debtor would file any the objection to the Proofs of Claim after that date so
7 that the Debtor could focus its complete attention on plan confirmation. But ultimately the decision
8 was made to file the objection prior to confirmation so there would be no accusation levied against
9 the Debtor that it improperly had engaged in gamesmanship (as the Debtor had not previously made
10 mention of an intention to object to the Proofs of Claim.) On May 21, 2024, on the eve of the
11 confirmation hearing, the Thibeaults filed their individual objections to the Proofs of Claims on
12 grounds that included (but also went beyond) the facial failures of the Proofs of Claim and their
13 inconsistency with positions taken by Class Creditors in the state court. The Debtor joined in the
14 objections.

15 Neither the Debtor nor the Thibeaults waited months to file the objections to the Proofs of
16 Claim and the joinders thereto. Once the massive inconsistency in amounts was discovered and the
17 decision was made to object, it was mere days. Under the circumstances, it was not unreasonable
18 for the Debtor to have joined in the Thibeaults' objections immediately ahead of plan confirmation.
19 Although the timing was by no means ideal, the filing before and not after plan confirmation was a
20 good faith effort at transparency.

21 **B. The Plan and Confirmation.**

22 Class Creditors also complain that WZTS spent excessive time relating to the Debtor's plan
23 of reorganization (as amended, modified and supplemented, "Plan"). WZTS disagrees.

24 WZTS did, in fact, spend substantial time assisting the Debtor in formulating and preparing
25 its Plan. The Plan was originally to be filed before the end of December 2023, with the goal of
26 moving forward with a confirmation hearing on February 14, 2024. However in December, the
27 Debtor's largest client, Zoox, Inc., a company representing over forty percent of Debtor's gross
28 revenue, gave notice that it was terminating its catering services agreement with the Debtor effective

1 March 2024, which significantly impacted the Debtor’s liquidation analysis and financial
2 projections, requiring material modification. WZTS then worked with the Debtor and its financial
3 advisor, Marcum, to redraft the Plan to reflect the materially altered circumstances in which the
4 Debtor found itself.

5 In anticipation of filing the redrafted Plan, WZTS prepared and, on January 12, 2024, filed
6 the Debtor’s motion for order approving a plan confirmation schedule [Doc. No. 69]. The Court
7 thereafter set the confirmation schedule to require the Plan to be filed by January 29, 2024, ballots
8 to be cast and preliminary objections to be filed and served by March 13, 2024, a confirmation
9 motion to be filed and served by March 20, 2024, objections to the confirmation motion to be filed
10 and served by April 3, 2024, a reply brief to be filed and served by April 10, 2024, and a confirmation
11 hearing on April 24, 2024 [*see*, Doc. No. 104].

12 On February 28, 2024, Class Creditors filed their *Motion Requesting Expansion of Trustee*
13 *Duties Pursuant to 11 U.S.C.A. §§ 1106 and 1183* (the “Trustee Expansion Motion”) (Dkt. 130), in
14 which they made various allegations (including certain materially inaccurate statements) that they
15 argued warranted the expansion of the Subchapter V Trustee’s powers so the Trustee could
16 investigate the operations and affairs of the Debtor. The Debtor did not oppose the Trustee
17 Expansion Motion as it had nothing to hide. The Subchapter V Trustee, however, did oppose the
18 motion. On March 11, 2024, Class Creditors filed a preliminary objection to the Plan (the
19 “Preliminary Plan Objection”) (Dkt. No. 138), arguing the Plan should not be confirmed because,
20 they alleged (inaccurately and without evidence)², the Plan under-projected the Debtor’s disposable
21 income over the life of the Plan, the Debtor would significantly outperform those projections and,
22 consequently, the Debtor should be required to pay more to creditors under the Plan.

23 On March 20, 2024, the Court heard and continued the hearing on the Trustee Expansion
24 Motion to April 10, 2024. It also raised its own questions regarding the Debtor’s monthly operating
25 reports and pushed the confirmation schedule back to permit the Debtor to file any amendments to
26

27 _____
28 ² In the months since the Preliminary Plan Objection, it would appear that Class Creditors might
now recognize that the Debtor was not under-projecting its performance.

1 the Plan by March 27, 2024, its confirmation motion by April 3, 2024, and its reply to any objections
2 to confirmation by April 24, 2024 [*see*, Dkt. No. 151]. The Court continued the confirmation
3 hearing itself to May 22, 2024.

4 WZTS again worked closely with the Debtor and Marcum to further amend the Plan to
5 address concerns raised by the Court, and, on March 27, 2024, filed the Debtor's amendments to the
6 Plan (Dkt. No.154). The Plan, as then amended, proposed to pay unsecured creditors \$326,355, its
7 projected disposable income over a period of three years. Administrative claimants, including
8 professionals, would be paid in full once such claims were allowed.

9 WZTS subsequently prepared and, on April 3, 2024, filed a further amendment to the Plan
10 (Dkt. No. 161) to reflect an updated set of projection calculations and an updated liquidation
11 analysis. WZTS also prepared and filed the Debtor's motion to confirm the Plan (Dkt. No. 160).
12 On April 17, 2024, objections to confirmation were filed by Class Creditors (Dkt. No. 172) and the
13 Subchapter V Trustee (Dkt. No. 173). The Subchapter V Trustee argued the Plan should only be
14 confirmed if the Debtor increased payments to unsecured creditors over the life of the Plan by
15 approximately \$178,000. WZTS prepared the reply brief to both objections (Dkt. No. 178).
16 Although the Debtor believed the Plan was confirmable and in conformity with the Bankruptcy
17 Code's requirement that it pay unsecured creditors its projected disposable income during the life of
18 the Plan, it nonetheless agreed to the Subchapter V Trustee's request, agreeing to pay more than its
19 projected disposable income.

20 On May 20, 2024, the Court held a status conference regarding the upcoming plan
21 confirmation hearing. The Court instructed the Debtor and Class Creditors to file a statement of
22 position regarding two procedural issues: (i) whether witness declarations submitted in support of
23 confirmation could be admitted as evidence in lieu of live testimony, and (ii) whether issues not
24 previously raised in written briefing should be precluded from being raised for the first time at the
25 confirmation hearing. WZTS researched and prepared the Debtor's statement of position and filed
26 that statement on May 21, 2024 (Dkt. No. 195).

27 Also, on May 21, 2024, the Thibeaults' filed their objections to the Proofs of Claim (Dkt.
28 Nos. 196 and 197). The Debtor joined in those objections (Dkt. Nos. 204 and 205).

WTZS prepared for the confirmation hearing. At the May 22, 2024 hearing, after lifting the automatic stay to permit the state court litigation to move forward, the Court continued the confirmation hearing to August 14, 2024, a date that would follow the then-scheduled start date of the trial in the Class Creditors' state court litigation against the Debtor.

WZTS, once again, worked with the Debtor and Marcum to prepare a further amended Plan given that the effective date of the Plan would be pushed back from the last iteration of the Plan and therefore the Debtor's projections and liquidation analysis required update. On June 12, 2024, WZTS filed the Debtor's Second Amended Plan (Dkt. No. 224) as well as an amended ballot summary (Dkt. No. 226).³

On July 2, 2024, the Debtor filed its application to employ Garofolo & Ramsdell ("G&R") as its special litigation counsel in the state court litigation (Dkt No. 237). G&R was already representing the Thibeaults in the Class Creditors' litigation and the Debtor determined it made sense from a cost, timing and efficiency standpoint, for G&R to represent the Debtor as well. The Class Creditors opposed the G&R application. On July 17, 2024, the Court heard and denied the application, concluding that G&R was conflicted due to its representation of the Thibeaults, whose interests were not aligned with those of the Debtor in the state court litigation. As the denial of the application left the Debtor without counsel in the state court litigation, and the Debtor would need time to find itself new counsel, the Debtor expected that the August 12, 2024 start date of the trial would be kicked to a later date. The Court determined to take the Debtor's Second Amended Plan

³ Although Class Creditors suggest that the substantial fees were incurred by WZTS due to drafting errors in the Plan, that is not the case. Plans routinely contain drafting errors. Those drafting errors typically take little time to correct, as was the case here. The issues that took most of WZTS's time were the updates and changes that had to be made to the projections and liquidation analyses attached to each iteration of the Plan. Most of the changes to the projections were the result of changes in the Debtor's customer base (the loss of certain customers and acquisition of others), changes in administrative expenses that continued to increase with the passage of time and ongoing fights with Class Creditors, and the Debtor's eventual agreement to increase distributions to unsecured creditors to amounts above its projected disposable income. The Debtor's modeling has been very detailed and has consistently attempted to account for as much information as has been available to the Debtor and its financial advisor. Any missed detail could result in material changes in the projections (as well as the liquidation analysis).

off calendar pending the outcome of the state court litigation and the liquidation of Class Creditors' claims.⁴

II. RESPONSES TO SPECIFIC COMPLAINTS OF CLASS CREDITORS

A. WZTS is Entitled to Compensation for the Time Spent on the Second Amended Plan After May 22, 2024.

Class Creditors maintain that, as a result of the Court's lifting of the stay to allow their litigation against the Debtor to move forward in the state court (a result for which they have consistently sought and advocated), the time WZTS thereafter spent in connection with the Plan was neither necessary or beneficial to the estate and should not be compensated. Objection, 3:26-4:7. WZTS disagrees.

At the May 22, 2024 hearing, the Court continued the confirmation hearing to August 14, 2024. The Court instructed the Debtor to file its Second Amended Plan, a redline of the Plan and an amended ballot summary by June 12, 2024. WZTS worked with the Debtor and its financial advisor to do as the Court instructed. During that time, the Debtor, Marcum and WZTS worked closely with one another to further hone and update the projections and the liquidation analysis. WZTS included the Subchapter V Trustee in the proposed revisions to the Plan.

All WZTS's services here were for the benefit of the estate. Any suggestion to the contrary is unsupported by fact and law.

B. Plan Drafting Errors Did Not Cause the Increased Fees of Which Class Creditors Complain

Class Creditors suggest that drafting errors in the Plan, namely language mistakenly included in the Disputed Claims and Claims Reserve provision in the Plan, somehow caused a substantial increase in WZTS's fees. Objection, 4:8-20. Once again, this just is not true. The fix to the Disputed Claims and Claims Reserve provision (Article 10.1 of the Plan) was a very simple one that did not take material time. As noted above, plans routinely contain minor drafting issues such as this which

⁴ By order entered by the Court on September 6, 2024 (Dkt. No. 285), the Debtor employed the firm of Julander Brown & Bollard LLP ("JBB") as its special litigation counsel in the state court litigation. WZTS understands that trial in that litigation is now set to commence on February 10, 2025.

are subsequently corrected or require modification. The time that WZTS spent after May 22, 2024 related largely to updating to the Plan, including the making of additional disclosures, working closely with the Debtor and Marcum in updating projections and the Debtor's liquidation analysis and drafting the Second Amended Plan to reflect such updates.

Class Creditors' objections to the Plan and the pressure brought upon the Debtor to increase unsecured creditor distributions are among the most significant reasons changes to the Plan that were made. It is worth noting that nowhere do Class Creditors identify the amount of the "increased fees" to which they are now objecting. Instead, they leave it to the Debtor and the Court to guess.

C. Fees for Work Performed in Connection With G&R's Employment Application

Class Creditors complain that "a large number of entries in the Application seek compensation for work seeking to approve [G&R] as special counsel." Objection, 4:23-25.

The Court denied G&R's employment. Although WZTS does not agree with the Court's conclusions regarding G&R having a potential, if not actual, conflict due to its ongoing representation of the Thibeaults in the state court litigation, WZTS respects and has not challenged the Court's decision.

Consequently, WZTS agrees to reduce its request for fees by the amount of fees incurred in connection with the Debtor's seeking G&R's employment. Based upon WZTS's review of the Application, WZTS believes its professionals spent a total of 30.3 hours of time and incurred total fees of \$13,510.50 in connection with G&R's employment application, as set forth below:

Professional	Hours	Rate	Amount
Daniel Weintraub	.9	\$695	\$625.50
David Zolkin	13.5	\$650	\$8,775.00
James Selth	.3	\$585	\$175.50
Derrick Talerico	.1	\$595	\$59.50
Martha Araki	15.5	\$250	\$3,875
Totals:	30.3		\$13,510.50

WZTS, thus, will reduce its total fee request by \$13,510.50.

D. Fees for Work in Connection with JBB's Employment is Fully Compensable

WZTS rejects Class Creditors' contention that the time it spent in connection with JBB's employment application should not be compensable. JBB's employment was approved by the Court by order entered on September 6, 2024 (Dkt. No. 285). That order was entered after JBB fully disclosed all of its connections to the Debtor and the bankruptcy estate in its employment application (Dkt. No. 274). JBB represented that it had no interest, and did not represent any interest, adverse to the Debtor or the bankruptcy estate. Thus, there is no basis upon which WZTS's fees for work performed in respect of JBB's employment should be disallowed.

As counsel for Class Creditors are well aware, JBB does not have any conflict of interest in its representation of the Debtor. On October 1, 2024, the day before Class Creditors filed the Objection, at a hearing in the state court at which they were present, JBB unequivocally represented that it does not and will not represent any members of the Class Creditors group.⁵ It is remarkable that Class Creditors failed to disclose as much to this Court while accusing JBB and WZTS of "egregious conduct" that did not occur. Objection, 5:9-11.

E. WZTS's Work Should Be Fully Compensable

The very point of interim fee applications is to allow estate professionals to be compensated prior to the confirmation and effective date of a plan and the end of a bankruptcy case. Bankruptcy Code § 331 allows professionals employed under section 327 to apply to the bankruptcy court for compensation during the pendency of the bankruptcy case so that they do not have to wait for a final fee application to receive any payment. Section 331 "provides financial relief to court-appointed officers engaged in protracted bankruptcy litigation, so that these officers do not have to wait for what may be years before receiving compensation." *In re Strand*, 375 F.3d 854, 858 (9th Cir. 2004).

Although the Plan has not been confirmed, as stated above, the Debtor and WZTS believe that the sole issue that remains before the Debtor can proceed with plan confirmation is the amount of the Class Creditors' claims against the Debtor. The Debtor is ready to proceed with confirmation

⁵ Class Creditors filed a separate objection to JBB's first interim fee application, in which they also claim that JBB is conflicted (Dkt. No. 300). JBB's reply brief, which is being contemporaneously filed with this Reply, fully addresses Class Creditors' false contention.

1 promptly following the liquidation of those claims. If the Court was to permit confirmation to move
2 forward ahead of their liquidation, the Debtor would be ready to proceed to confirmation at that time.

3 WZTS fees in this Case have been reasonable and necessary in a case that has been
4 contentious. As discussed above, the fees sought in the Application do not threaten the existence of
5 the Debtor because none of WZTS or the other professionals have requested payment of more than
6 \$170,000, collectively, plus monthly payments of \$15,000 thereafter, all to be divided among their
7 allowed professional fee and expense claims on a *pro rata* basis

8 **III. CONCLUSION**

9 For all of the foregoing reasons, the Debtor requests the Application be approved, subject to
10 a reduction of \$13,510.50 in G&R employment time (as described above), and that the Court
11 (i) approve and allow on an interim basis, 80% of the compensation (\$286,101.20 after deduction
12 of \$13,510.50 from the total) and 100% of the expenses incurred by WZTS during the Application
13 Period, (ii) approve the previous application by WZTS of the \$25,223.00 retainer balance as of the
14 Petition Date against the fees and expenses that are allowed, (iii) authorize and direct the Debtor
15 to pay to WZTS and the other professionals that filed interim fee applications (a) promptly following
16 the entry of one or more interim orders allowing such professionals' fees and expenses, \$170,000,
17 to be shared ratably among all such professionals based upon their allowed fees and expenses and
18 (b) commencing on the fifteenth day of the first month following the date on which such interim fee
19 orders are entered, \$15,000 a month, to be shared ratably among such professionals, with such
20 monthly payments to continue until the fees and expenses allowed pursuant to the Court's interim
21 fee order(s) have been paid in full or until there is a further order of the Court directing otherwise.

22 Dated: October 9, 2024

WEINTRAUB ZOLKIN TALERICO & SELTH LLP

23
24 By David B. Zolkin

Daniel J. Weintraub

David B. Zolkin

26 General Bankruptcy Counsel for
27 Chapter 11 Debtor and Debtor in Possession,
28 KOMBU KITCHEN SF, LLC, dba NIBLL

EXHIBIT 1

Proof of Claim 25*

*Proof of Claim 25 downloaded from the Court's website is a "live" form that was not flattened by the creditors prior to filing; the copy attached has been flattened pursuant to the Court's Local Rules and the Central Guide for filing as an exhibit to Reply.

Fill in this information to identify the case:

Debtor 1 _____

Debtor 2 _____
(Spouse, if filing)

United States Bankruptcy Court for the: Central District of California

Case number _____

Official Form 410

Proof of Claim

04/22

Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Do not use this form to make a request for payment of an administrative expense. Make such a request according to 11 U.S.C. § 503.

Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. **Do not send original documents;** they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 309) that you received.

Part 1: Identify the Claim

1. Who is the current creditor?		
Name of the current creditor (the person or entity to be paid for this claim) _____		
Other names the creditor used with the debtor _____		
2. Has this claim been acquired from someone else?		
<input type="checkbox"/> No		
<input type="checkbox"/> Yes. From whom? _____		
3. Where should notices and payments to the creditor be sent? Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)	Where should notices to the creditor be sent?	Where should payments to the creditor be sent? (if different)
	Name _____	Name _____
	Number _____ Street _____	Number _____ Street _____
	City _____ State _____ ZIP Code _____	City _____ State _____ ZIP Code _____
	Contact phone _____	Contact phone _____
	Contact email _____	Contact email _____
	Uniform claim identifier for electronic payments in chapter 13 (if you use one): _____	
4. Does this claim amend one already filed?		
<input type="checkbox"/> No		
<input type="checkbox"/> Yes. Claim number on court claims registry (if known) _____		
Filed on _____ MM / DD / YYYY		
5. Do you know if anyone else has filed a proof of claim for this claim?		
<input type="checkbox"/> No		
<input type="checkbox"/> Yes. Who made the earlier filing? _____		

Part 2: Give Information About the Claim as of the Date the Case Was Filed

6. Do you have any number you use to identify the debtor?	<input type="checkbox"/> No <input type="checkbox"/> Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: _____
7. How much is the claim? \$ _____	Does this amount include interest or other charges? <input type="checkbox"/> No <input type="checkbox"/> Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).
8. What is the basis of the claim?	Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card. Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c). Limit disclosing information that is entitled to privacy, such as health care information. _____
9. Is all or part of the claim secured?	<input type="checkbox"/> No <input type="checkbox"/> Yes. The claim is secured by a lien on property. Nature of property: <input type="checkbox"/> Real estate. If the claim is secured by the debtor's principal residence, file a <i>Mortgage Proof of Claim Attachment</i> (Official Form 410-A) with this <i>Proof of Claim</i> . <input type="checkbox"/> Motor vehicle <input type="checkbox"/> Other. Describe: _____ Basis for perfection: _____ Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.) Value of property: \$ _____ Amount of the claim that is secured: \$ _____ Amount of the claim that is unsecured: \$ _____ (The sum of the secured and unsecured amounts should match the amount in line 7.) Amount necessary to cure any default as of the date of the petition: \$ _____ Annual Interest Rate (when case was filed) _____ % <input type="checkbox"/> Fixed <input type="checkbox"/> Variable
10. Is this claim based on a lease?	<input type="checkbox"/> No <input type="checkbox"/> Yes. Amount necessary to cure any default as of the date of the petition. \$ _____
11. Is this claim subject to a right of setoff?	<input type="checkbox"/> No <input type="checkbox"/> Yes. Identify the property: _____

12. Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?

☐ No

☐ Yes. Check one:

☐ Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).

Amount entitled to priority

\$ _____

☐ Up to \$3,350* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7).

\$ _____

☐ Wages, salaries, or commissions (up to \$15,150*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4).

\$ _____

☐ Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8).

\$ _____

☐ Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5).

\$ _____

☐ Other. Specify subsection of 11 U.S.C. § 507(a)() that applies.

\$ _____

* Amounts are subject to adjustment on 4/01/25 and every 3 years after that for cases begun on or after the date of adjustment.

Part 3: Sign Below

The person completing this proof of claim must sign and date it. FRBP 9011(b).

If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what a signature is.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Check the appropriate box:

☐ I am the creditor.

☐ I am the creditor's attorney or authorized agent.

☐ I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.

☐ I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgment that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this *Proof of Claim* and have a reasonable belief that the information is true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on date _____
MM / DD / YYYY

Signature _____

Print the name of the person who is completing and signing this claim:

Name

First name

Middle name

Last name

Title

Company

Identify the corporate servicer as the company if the authorized agent is a servicer.

Address

Number

Street

City

State

ZIP Code

Contact phone

Email

Print

Save As...

Add Attachment

Reset

		BOH	FOH
Rest Wages	\$	416,220.28	\$ 294,183.84
Meal Wages	\$	291,846.27	\$ 214,597.59
226	\$	202,231.60	\$ 151,150.00
203	\$	643,543.40	\$ 546,401.20
PAGA 203/256/1197.1	\$	643,543.40	\$ 546,401.20
226.3	\$	2,229,134.91	\$ 1,616,250.00
558	\$	209,617.99	\$ 151,150.00
210	\$	419,235.98	\$ 302,300.00
Fees	\$	899,765.00	\$ 1,230,956.00
Costs	\$	7,300.00	\$ 14,630.76
Totals	\$	5,962,438.82	\$ 5,068,020.59
LC 2802	\$	-	\$67,000.00
TOTAL	\$	5,962,438.82	\$ 5,135,020.59

EXHIBIT 2

Proof of Claim 26

Fill in this information to identify the case:

Debtor 1 Kombu Kitchen SF, LLC

Debtor 2
(Spouse, if filing) _____

United States Bankruptcy Court for the: Central District of California

Case number 2:23-bk-17276-S

Official Form 410

Proof of Claim

04/22

Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Do not use this form to make a request for payment of an administrative expense. Make such a request according to 11 U.S.C. § 503.

Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. Do not send original documents; they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 309) that you received.

Part 1: Identify the Claim

1. Who is the current creditor?	<u>Maria De Jesus Vergara et al., the Certified Class, & Class Counsel Mallison & Martinez</u> Name of the current creditor (the person or entity to be paid for this claim)		
	Other names the creditor used with the debtor _____		
2. Has this claim been acquired from someone else?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. From whom? _____		
3. Where should notices and payments to the creditor be sent? Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)	Where should notices to the creditor be sent? <u>Maria De Jesus Vergara</u> Name <u>1939 Harrison Street Suite 730</u> Number Street <u>Oakland</u> <u>CA</u> <u>94612</u> City State ZIP Code Contact phone <u>(510) 832-9999</u> Contact email <u>enotices@themmlawfirm.com</u> Uniform claim identifier for electronic payments in chapter 13 (if you use one): _____	Where should payments to the creditor be sent? (if different) _____ Name _____ Number Street _____ City State ZIP Code Contact phone _____ Contact email _____	
4. Does this claim amend one already filed?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Claim number on court claims registry (if known) _____ Filed on _____ MM / DD / YYYY		
5. Do you know if anyone else has filed a proof of claim for this claim?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Who made the earlier filing? _____		

Part 2: Give Information About the Claim as of the Date the Case Was Filed

6. Do you have any number you use to identify the debtor?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: _____
7. How much is the claim?	\$ <u>5,962,438.82</u> . Does this amount include interest or other charges? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).
8. What is the basis of the claim?	Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card. Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c). Limit disclosing information that is entitled to privacy, such as health care information. Class/PAGA Claims/Fees & Costs (Alameda Case #RG20057449) _____
9. Is all or part of the claim secured?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. The claim is secured by a lien on property. Nature of property: <input type="checkbox"/> Real estate. If the claim is secured by the debtor's principal residence, file a <i>Mortgage Proof of Claim Attachment</i> (Official Form 410-A) with this <i>Proof of Claim</i> . <input type="checkbox"/> Motor vehicle <input type="checkbox"/> Other. Describe: _____ Basis for perfection: _____ Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.) Value of property: \$ _____ Amount of the claim that is secured: \$ _____ Amount of the claim that is unsecured: \$ _____ (The sum of the secured and unsecured amounts should match the amount in line 7.) Amount necessary to cure any default as of the date of the petition: \$ _____ Annual Interest Rate (when case was filed) _____ % <input type="checkbox"/> Fixed <input type="checkbox"/> Variable
10. Is this claim based on a lease?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Amount necessary to cure any default as of the date of the petition. \$ _____
11. Is this claim subject to a right of setoff?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Identify the property: _____

12. Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?

☒ No

☐ Yes. Check one:

Amount entitled to priority

A claim may be partly priority and partly nonpriority. For example, in some categories, the law limits the amount entitled to priority.

☐ Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).

\$ _____

☐ Up to \$3,350* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7).

\$ _____

☐ Wages, salaries, or commissions (up to \$15,150*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4).

\$ _____

☐ Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8).

\$ _____

☐ Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5).

\$ _____

☐ Other. Specify subsection of 11 U.S.C. § 507(a)() that applies.

\$ _____

* Amounts are subject to adjustment on 4/01/25 and every 3 years after that for cases begun on or after the date of adjustment.

Part 3: Sign Below

The person completing this proof of claim must sign and date it. FRBP 9011(b).

If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what a signature is.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Check the appropriate box:

☐ I am the creditor.

☒ I am the creditor's attorney or authorized agent.

☐ I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.

☐ I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgment that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this *Proof of Claim* and have a reasonable belief that the information is true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on date 01/10/2023
MM / DD / YYYY

/s/ Cody A. Bolce

Signature

Print the name of the person who is completing and signing this claim:

Name Cody Alexander Bolce
First name Middle name Last name

Title Attorney for Maria De Jesus Vergara and the Class

Company Mallison & Martinez
Identify the corporate servicer as the company if the authorized agent is a servicer.

Address 1939 Harrison Street, Suite 730
Number Street

Oakland CA 94612
City State ZIP Code

Contact phone (510) 832-9999 Email enotices@themmlawfirm.com

Print

Save As...

Add Attachment

Reset

ATTACHMENT 1

		BOH	FOH
Rest Wages	\$	416,220.28	\$ 294,183.84
Meal Wages	\$	291,846.27	\$ 214,597.59
226	\$	202,231.60	\$ 151,150.00
203	\$	643,543.40	\$ 546,401.20
PAGA 203/256/1197.1	\$	643,543.40	\$ 546,401.20
226.3	\$	2,229,134.91	\$ 1,616,250.00
558	\$	209,617.99	\$ 151,150.00
210	\$	419,235.98	\$ 302,300.00
Fees	\$	899,765.00	\$ 1,230,956.00
Costs	\$	7,300.00	\$ 14,630.76
Totals	\$	5,962,438.82	\$ 5,068,020.59
LC 2802	\$	-	\$67,000.00
TOTAL	\$	5,962,438.82	\$ 5,135,020.59

EXHIBIT 3

MSC Statement

1 STAN S. MALLISON (Bar No. 184191)
StanM@TheMMLawFirm.com
2 HECTOR R. MARTINEZ (Bar No. 206336)
HectorM@TheMMLawFirm.com
3 CODY A. BOLCE (Bar No. 322725)
CBolce@TheMMLawFirm.com
4 MALLISON & MARTINEZ
1939 Harrison Street, Suite 730
Oakland, California 94612-3547
5 Telephone: (510) 832-9999
Facsimile: (510) 832-1101

6 Attorneys for PLAINTIFFS Vergara, Ramos,
7 and Reyes, and the State of California, pursuant
8 to the Private Attorneys General Act

9 CAPTION CONTINUED ON NEXT PAGE

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA

11 IN AND FOR THE COUNTY OF ALAMEDA

12 MA DE JESUS VERGARA, PAHOLA
13 RAMOS, and ROBERTO REYES, on behalf
of themselves and all others similarly
14 situated,

15 Plaintiffs,

16 vs.

17 KEVEN THIBEAULT; KRISTEN N.
THIBEAULT; ALFONSO VENTURA; and
18 DOES 1 through 20,

19 Defendants.

20 AJA DE COUDREAUX, an individual;
ZENA EVANS, an individua; DAEUN
21 HWANG, an individual; and VERA
LOPEZ, an individual; MYRIAH SIMS, an
individual; and NICOLE VASSALLO, an
22 individual;

23 Plaintiffs,

24 vs.

25 KEVEN THIBEAULT, and individual;
KRISTEN THIBEAULT, an individual; and
26 DOES 1-20,

27 Defendants.
28

Case No. RG20058323 (lead) (consolidated
with RG20057449)

**AMENDED JOINT MANDATORY
SETTLEMENT CONFERENCE
STATEMENT**

**Date: April 16, 2024
Time: 9:00 AM
Dept: 301**

1 ILYA FILMUS (SBN: 251512)
2 PAUL PFEILSCHIEFTER (SBN: 301463)
3 1020 Aileen Street
4 Lafayette, CA 94549
5 Telephone: (925) 732-1188
6 Facsimile: (925) 732-1189
7 ifilmus@infinitylawca.com
8 ppfeilschifter@infinitylawca.com
9
10 Attorneys for Plaintiffs and the State of California
11 Pursuant to the Private Attorneys General Act
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 On behalf of themselves, as representatives of the certified classes, and as Private Attorneys
2 General for the State of California, plaintiffs in Case No. RG20057449 ("Vergara Matter"), Ma De
3 Jesus Vergara, Pahola Ramos and Roberto Reyes, along with, plaintiffs in Case No. RG20058323
4 ("Coudreaux Matter"), Aja De Coudreaux, Zena Evans, Daeun Hwang, Vera Lopez, Myriah Sims,
5 and Nicole Vassallo, submit this Joint Mandatory Settlement Conference Statement in advance of
6 the Mandatory Settlement Conference scheduled for April 16, 2024.

7 ***All representations and allegations herein apply only to the individual defendants, Keven***
8 ***and Kristin Thibeault. Nothing herein is intended to violate the automatic stay that applies to***
9 ***Kombu Kitchen SF, LLC (dba NYBLL) and should not be construed as such.***

10 **I. Summary of all liability facts and issues**

11 This case stems from Defendants' multiple wage and hour violations, including 1) failing to
12 provide timely and complete 30-minute meal periods (no, short, and late), 2) failing to provide rest
13 periods, and 3) failing to compensate employees for necessary business expenses.¹

14 **a. Failure to Provide Compliant Meal Periods (Vergara & Coudreaux Matters)**

15 ***Back of House (Vergara Matter) Facts²***

16 Due to the high-pressure work environment, kitchen employees were often required to take
17 late or interrupted meal periods or skip them altogether. Meal periods were allotted at different times
18 depending on how busy the kitchen was. Additionally, while on meal periods, kitchen staff was
19 asked to perform work (i.e. tend cooking food). Because there was no break area on-site, kitchen
20 staff would eat their meals standing at or near their work stations. Employees were not paid meal
21 period premiums for late, short or interrupted meal periods.

22 ***Concierge (Coudreaux Matter) Facts***

23
24
25 ¹ The Court certified classes for failure to provide meal periods for both cases (i.e., Case No. RG20058323 and
26 RG200574491). The Court also certified subclasses in Case No. RG20058323, the Coudreaux Matter, for 1) Failure to
27 Provide Rest Periods; and 2) Failure to Indemnify for Necessary Business Expenditures in Violation of Labor Code
28 §2802. Facts are provided herein according to these certified classes.

² Plaintiffs in both matters will attend the Settlement Conference ready and able to provide admissible evidence in
support of each of the facts stated herein.

For the concierge employees, there simply were no lawful meal periods allowed. Concierge employees began each shift at around 9:00 AM at NYBLL's headquarters, where they prepared for the daily trip to NYBLL's clients by loading a NYBLL vehicle. Once the NYBLL vehicle was loaded and ready with the day's supplies, employees then travelled to one of NYBLL's client sites where they were to set up for the daily lunch service, which was staffed by either one or two concierge employees. Lunch service ran from approximately noon until 1:00 PM, depending on the client, at which time concierge employees were required to break down the food service area and prepare for the trip back to NYBLL headquarters. Once back at NYBLL headquarters, employees unloaded the supplies from the NYBLL vehicle and put away those supplies—including disposing of food that was not consumed at the client site. A typical day ended between 2:00 to 4:00 PM, depending on the client's needs. Concierge employees were required to be on the ready and available at all times throughout their shifts for purposes of both the NYBLL client demands and for NYBLL managerial reasons. No time was allowed for concierge employees to take a meal period during which they were fully relieved of their duties.

Common Facts to Each Matter

The failure to provide missed meal periods is documented in detail in the time records analyzed by Plaintiffs' expert Aaron Woolfson. Mr. Woolfson determined the following violation rates:

	Count	Percentage
Shifts >5 Hours	19834	
Late Meal	6630	33.43%
Short Meal	2760	13.92%
Missed Meal	8603	43.38%
No Second Meal	529	2.67%
Deduplicated Violations	15950	80.42%

b. Failure to Provide Rest Periods (Coudreaux Matter)

Similar to meal periods, concierge employees were not allowed rest periods while on duty at NYBLL's clients, as they were never fully relieved of their duties. NYBLL required all concierge employees to be reachable throughout the day and at all times on their personal cell phones and required employees to use various applications downloaded to their personal phones throughout their

shift. At any time, concierge employees were required to be ready to respond to client demands while on-site. NYBLL used various technology to track and monitor their employees throughout the day, including their location and whereabouts.

NYBLL allowed no food consumption during a shift and employees could be disciplined for eating food they brought from home. NYBLL did not allow its employees to consume food prepared for clients. Concierge employees were discouraged from using the restroom while at the client's worksite.

c. Failure to Indemnify for Necessary Business Expenses (Coudreaux Matter)

Defendants required that concierge employees incur work-related expenses without reimbursement. Specifically, concierge staff was required to purchase and use their personal cell phones for work purposes.³ Plaintiffs seek recovery for these expenditures. (See, e.g., *Castro v. ABM*, a cell phone reimbursement case before the Northern District of California, wherein the Court found that Plaintiffs' damage model which provided for approximately \$30/month in cell phone usage reimbursements, was "equal to the minimum available cost of a cell phone in California [...]."⁴

II. Hearing date for any dispositive motion

No dispositive motions are anticipated before trial.

III. Summary of remaining discovery

The parties continue to meet and confer over all outstanding discovery disputes and expect that any disputes will be resolved before trial.

IV. List of all economic damages claimed

Liability Theory	Exposure
Meal Period (premiums) - Class	\$366,869
Rest Period (premiums) - Class	\$512,977
Reimbursement - Class	\$13,694
Waiting Time (§203) – Class	\$1,218,533
Wage Statement (§226) – Class	\$283,300

³ A 2018 Oxford Economics study analyzed companies' practices with respect to employee mobile use and its associated costs. Plaintiffs can provide a copy of this study at the conference if necessary. The study found that companies which ask their employees to bring their own devices (BYOD) and provide a stipend to cover a portion of the device cost and the monthly service bill paid an average of \$36 per month to their employees for this stipend.

⁴ Plaintiffs for the Coudreaux Matter will be prepared to provide copies of *Castro v. ABM Class Cert. Order Ex. F*, at 6 n.5; *Castro v. ABM Expert Decl. ISO Class Cert. Ex. G*, at 8 n.16.

1	Waiting Time – PAGA	\$1,218,533
2	Wage Statement – PAGA	\$822,250
3	Pay Period Waiting Time – PAGA (§210)	\$576,100
4	§558 Penalties - PAGA	\$288,050
5	§1197.1 Penalties - PAGA	\$576,100
6	Total	\$5,876,406
7		

8 **V. Current good faith settlement offer or demand of each party**

9 Defendants offered \$600,000 for a global settlement in September 2023, reduced that amount
10 to \$100,000 at the last settlement conference, and now offer \$25,000.00 to settle both cases on behalf
11 of both remaining defendants.

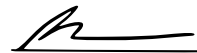
12 Plaintiffs are prepared to reopen negotiations at \$1,400,000.00. This is a reduction of
13 \$100,000.00 from our last offer.

14 **VI. Name, date, and description of each alternative dispute resolution neutral's
15 attempt to resolve this case**

16 The parties attended two private mediations with now retired Mediator Justice Vartebedian,
17 on April 7, 2021, a second mediation on October 24, 2022, and a prior settlement conference on
18 September 25, 2023. Defendants did not come to either mediation or to the prior settlement
19 conference prepared to resolve the matter in good faith, instead electing to file bankruptcy for the
20 Kombu entity while continuing to litigate this matter.

21 Dated: April 12, 2024

MALLISON & MARTINEZ

22 By: 
23 Stan S. Mallison
24 Hector R. Martinez
25 Cody A. Bolce
26 Attorney for Plaintiffs

27 Dated: April 12, 2024

INFINITY LAW GROUP LLP

28 By: 
Paul K. Pfeilschifter
Attorneys for Coudreaux Plaintiffs

PROOF OF SERVICE

I am employed in the County of Alameda, State of California. I am over the age of 18 and not a party to the within action; my business address is 1939 Harrison Street, Suite 730, Oakland, California 94612.

On April 12, 2024, I served the documents described as:

- **Plaintiffs' MSC Statement**

on *Interested Parties at the following* addresses:

Craig P. Ramsdell
Garofolo & Ramsdell, LLP
3443 Golden Gate Way, Suite H
Lafayette, CA 94549
Email: cramsdell@garofololaw.com

Attorney for Defendants Kristin Thibeault; and
Kevin Thibeault.

[X] BY U.S. MAIL: I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at Oakland, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postage cancellation date or postage meter date is more than one day after date of deposit for mailing this affidavit.

[] BY E-Mail: By transmitting the foregoing documents to the e-mail addresses listed above. The transmission was reported completed and without error. The foregoing documents were emailed from darjona@themmlawfirm.com.

[X] STATE: I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on April 12, 2024 at Oakland, California.



Daniel Arjona

PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is:
11766 Wilshire Blvd, Suite 730, Los Angeles, CA 90025

A true and correct copy of the foregoing document entitled (*specify*): **Reply to Class Creditors Joint Opposition of Class Creditors to First Interim Application of Weintraub Zolkin Talerico & Selth LLP for Approval of Compensation and Reimbursement of Expenses**, will be served or was served (a) on the judge in chambers in the form and manner required by LBR 5005-2(d); and (b) in the manner stated below:

1. **TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF)**: Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On (*date*) October 9, 2024, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

See attached NEF service list.

☒ Service information continued on attached page

2. **SERVED BY UNITED STATES MAIL**:

On (*date*) _____, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

☐ Service information continued on attached page

3. **SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL** (state method for each person or entity served): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on (*date*) October 9, 2024, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

Honorable Sandra R. Klein (Via Priority Mail)
United States Bankruptcy Judge
255 E. Temple St., Suite 1582
Los Angeles, CA 90012

☐ Service information continued on attached page

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

October 9, 2024
Date

Martha E. Araki
Printed Name

/s/ Martha E. Araki
Signature

In re Kombu Kitchen SF LLC

Case No. 2:23-bk-17276-SK

1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF):

- Attorneys for Debtor Kombu Kitchen SF LLC: **Daniel J. Weintraub, David B. Zolkin, James R. Selth, Catherine Liu:** dweintraub@wztslaw.com; dzolkin@wztslaw.com; jselth@wztslaw.com; cliu@wztslaw.com; maraki@wztslaw.com; sfritz@wztslaw.com
- Subchapter V Trustee: **Mark Sharf:** mark@sharflaw.com; C188@ecfcbis.com; sharf1000@gmail.com; 2180473420@filings.docketbird.com
- Attorneys for American Express National Bank c/o Zwicker & Associates, P.C.: **Karen L. Belair:** kbelair@zwickerpc.com
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